

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ALVIN SUAREZ,

: Plaintiff, : 23-CV-10129 (JLR) (OTW)

: -against- : ORDER

: BRAND DISTRIBUTORS, INC.,

: Defendants. :  
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**ONA T. WANG, United States Magistrate Judge:**

The Court is in receipt of Plaintiff's letter indicating that Defendant has, once again, failed to comply with Court orders and meet discovery deadlines in this case. (ECF 26). On April 3, 2024, I issued an Order to Show Cause by April 8, 2024, why I should not recommend that Judge Rochon strike Defendant's answer (ECF 10) and find Defendant in default, for failure to comply with the Court's orders. (ECF 23). In a letter dated April 8, 2024 but untimely filed April 9, 2024, defense counsel David Stein stated that he "cannot, and does not, deny that [he] has been dilatory in handling discovery" and that "[t]here is no good excuse for this," but asked the Court to order Defendant to comply with its discovery obligations rather than sanctioning Defendants by striking Defendant's answer and/or entering default. (ECF 24). I issued an Order the same day granting Plaintiff's motion to compel outstanding discovery, setting a discovery schedule, and indicating that I had reviewed Mr. Stein's response and a recommendation to strike the answer was not warranted at the time. (ECF 25). Plaintiff now writes that Defendant has failed, once again, to respond to emails, discovery requests, and a calendar invite, resulting

in a second deposition cancellation and a failure to meet Court-ordered discovery deadlines again. (ECF 26).

Defendant has violated both Fed. R. Civ. P. 16 and 37(a)(5). The Court has broad discretion under Fed. R. Civ. P. 16 and 37, as well as its own inherent authority, to fashion an appropriate sanction for failure to comply with its orders. *See, e.g., Lawal v. Earth's Elements*, 22-CV-8490 (JHR) (OTW), ECF 36 (citing *Macolor v. Libiran*, No. 14-CV-4555 (JMF), 2015 WL 337561, at \*2 (S.D.N.Y. Jan. 23, 2015)).

Accordingly, Plaintiff is directed to submit, **by Friday, May 17, 2024**, billing records for time spent on this case. Plaintiff is further directed to indicate if there is any other relief he seeks and the basis for such relief, including dispositive sanctions. Defense counsel, Mr. Stein, shall respond **no later than Monday, May 20, 2024**. There shall be no replies.

**SO ORDERED.**

Dated: May 10, 2024  
New York, New York

/s/ Ona T. Wang  
**Ona T. Wang**  
United States Magistrate Judge